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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/619,273	07/14/2003	Patrick Gillen	07006.00011	6321
7590	09/01/2005		EXAMINER	
Steven Thrasher 391 Sandhill Dr. Richardson, TX 75080			CECIL, TERRY K	
			ART UNIT	PAPER NUMBER
			1723	
DATE MAILED: 09/01/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/619,273

Applicant(s)

GILLEN ET AL.

Examiner

Mr. Terry K. Cecil

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 14 July 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 7-14-2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Drawings*

1. The drawings are objected to because of the following:
  - They fail to comply with 37 CFR 1.84(p)(5) because the drawings *do not include* the following reference signs mentioned in the description: “112”, “125”, “126”, “127” (all on page 8), and “340” (on page 11). In addition, figure 1 includes reference no. “142” that is not included in the specification.
  - They are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the “debris directing means that comprises an orifice and a collecting means that is adapted to attach to the perimeter of the orifice” of *claim 9* must be shown or the features canceled from the claims. No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as “amended.” If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either “Replacement Sheet” or “New Sheet”

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pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### *Specification*

2. The disclosure is objected to because of the following:
  - The subject matter of claim 17 (i.e. the clip) is missing from the specification.
  - The abstract of the disclosure is objected to because a word or words is missing after “debris from a”. See MPEP § 608.01(b).

Appropriate correction is required.

### *Claim Rejections - 35 USC § 112*

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 11 and 13-16 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The claims are indefinite because of the following reasons:
  - The following terms lack antecedent basis: “the upper most portion” and “the lower most portion” (claim 11; the upper and lowermost portion of what?).
  - Claims 13-16 are rejected since they suffer the same defects as the claims from which they depend.

*Claim Rejections - 35 USC § 102*

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

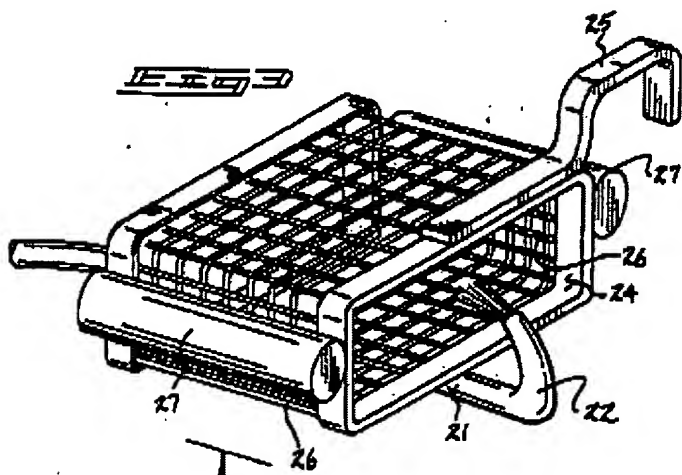
A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

6. Claims 1-2, 4-5 and 8 are rejected under 35 U.S.C. 102(b) as being anticipated by Weiss (U.S. 5,279,728). Weiss teaches a static pool skimmer including a mounting portion adapted to

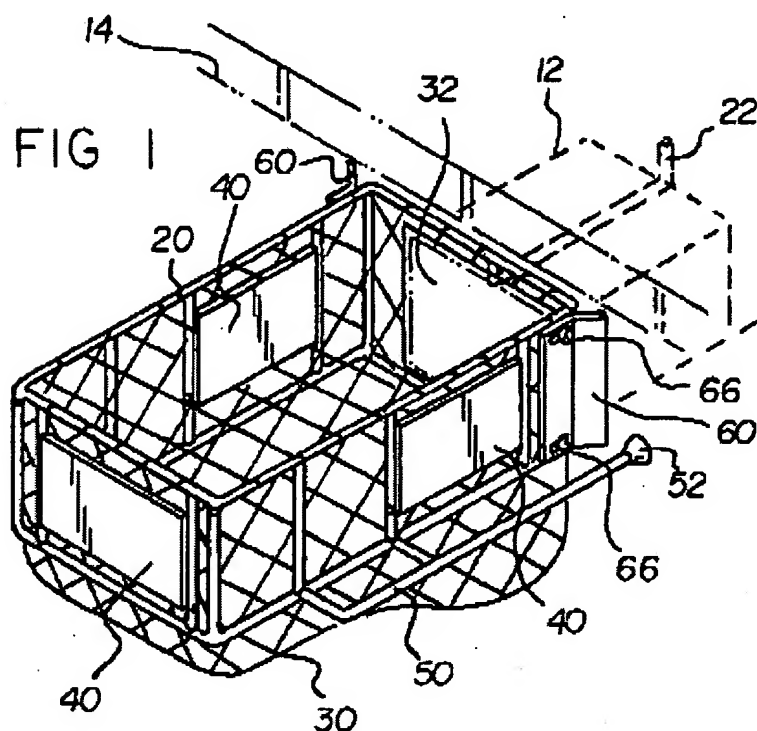


mount onto the rail of an above ground pool (figure 2); a collecting portion (24, 26); a coupling portion therebetween (the horizontal portion of 25 attached the frame of the collecting portion); and a debris directing means (either 22 or the 2<sup>nd</sup>

float 27 mounted adjacent element 25) [as in claims 1-2]. The collecting means includes a net 32 (fig. 8) [as in claim 5] and a frame having a floatation member (the 1<sup>st</sup> float 27) and the claimed arms [as in claim 4]. As for claim 8, the elements shown in figure 3 (including the 2<sup>nd</sup> float and the debris jet 21,22) attached together and acting as a unit is sufficient to anticipate “integrally-formed”.

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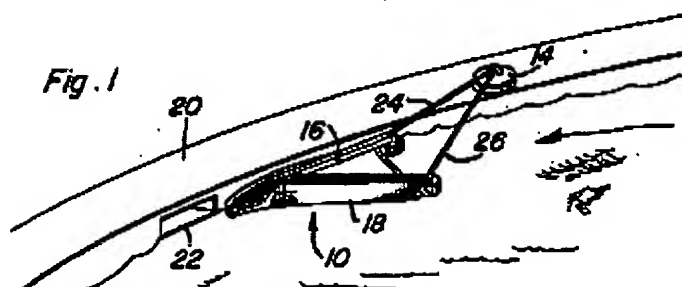
7. Claims 1, 7 and 9 are rejected under 35 U.S.C. 102(b) as being anticipated by Anderson (U.S. 5,833,845). Anderson teaches a static pool skimmer including a mounting portion (hook



22 or suction cups 52); a collecting portion 20/30; a coupling means coupling the mounting and collecting portions (either the vertical portion of 22 attached to the frame 20 or element 50 attached to the suction cups 52); and a debris directing means (either 60 or doors 40) [as in claim 1].

The debris directing means 60 is adapted to removably attach to frame 20 [as in claim 7] and the debris directing means 40 comprises an orifice surrounded by a collecting means [as in claim 9].

8. Claims 1, 4-5 and 8 are rejected under 35 U.S.C. 102(b) as being anticipated by Sermons (U.S. 4,089,074). Sermons teaches a static pool skimmer including a mounting means 14;

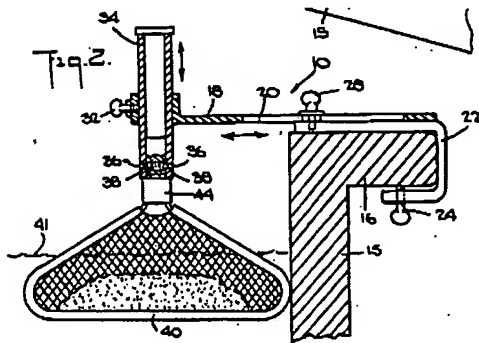


a coupling means 24, 26; a collecting means 18 including a net; and a float (considered integral) adjacent the pool wall that acts to divert debris into the

collecting means openings [as in claims 1, 4-5 and 8].

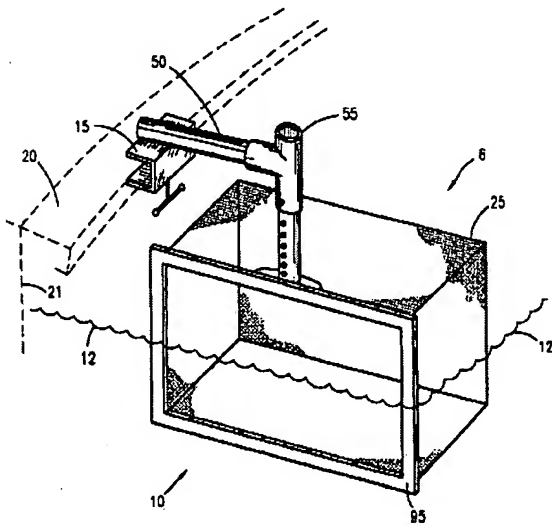
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9. Claims 1-3 and 8 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by either Baer (U.S. 6,398,952) or McFarland (U.S. 5,173,181).



As shown by their drawings both Baer and McFarland teach all the limitations of claims 1-3 and 8. In addition, McFarland clearly teaches his skimmer for both above and in-ground pools (col. 5, lines 20-25). Because the mounting means of Baer is "universal",

the skimmer can be attached to both above and in-ground pools.



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***Claim Rejections - 35 USC § 103***

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

11. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Sermons in view of Morgan (U.S. 4,010,103). Sermons teaches floats made of foamed polymeric material (col. 3, lines 39) but does not specify the material to be polyurethane. However, Morgan teaches a skimmer including foamed polyurethane material for the floats 32 (col. 3, lines 15-20). It is considered that it would have been obvious to one ordinarily skilled in the art at the time of the invention to have the foamed polyurethane material of Morgan as the foamed polymeric material of Sermon, since Morgan teaches the benefit of a commercially-available material for use in skimmer flotation devices.

12. Claims 10-13 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Anderson in view of either Baer OR McFarland. Anderson has been expanded above and teaches the debris directing means including the securing portion—as shown in figure 6 thereof. Anderson does not teach a mounting means adapted to attach to the rail of a swimming pool.

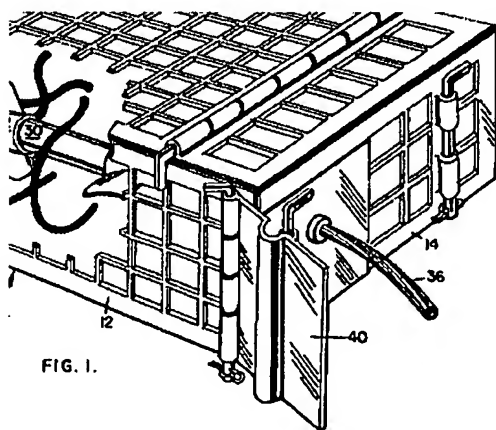


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However such is taught by both Baer and McFarland [as in claim 10], wherein the mounting means are adjustable [as in claim 12]. It is considered that it would have been obvious to one ordinarily skilled in the art at the time of the invention to have the mounting means of EITHER Baer or McFarland in the invention of Anderson, since both teaches the benefit of being adjustable in the vertical directions. Such would allow the skimmer of Anderson to be placed at and secured at a desired customizable height in either an above and in-ground swimming pool.

As for claim 11, Anderson teaches a side-arm of his collecting means frame to be connected to the element 60. As for claims 13 and 15, both the mounting member 55/50 and the coupling member 85 of Baer comprises hollow tubing. The same is true for McFarland, i.e. mounting member 24 and coupling member 44 (see figure 3).

13. Claims 17-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over the modified Anderson, as applied above, and in further view of Mendes (U.S. 5,779,392). The modified Anderson differs from that of claims 17-20 by requiring the debris directing means to be a clip and a flap. However, such a clip and flap 40 is taught by Mendes as shown below.



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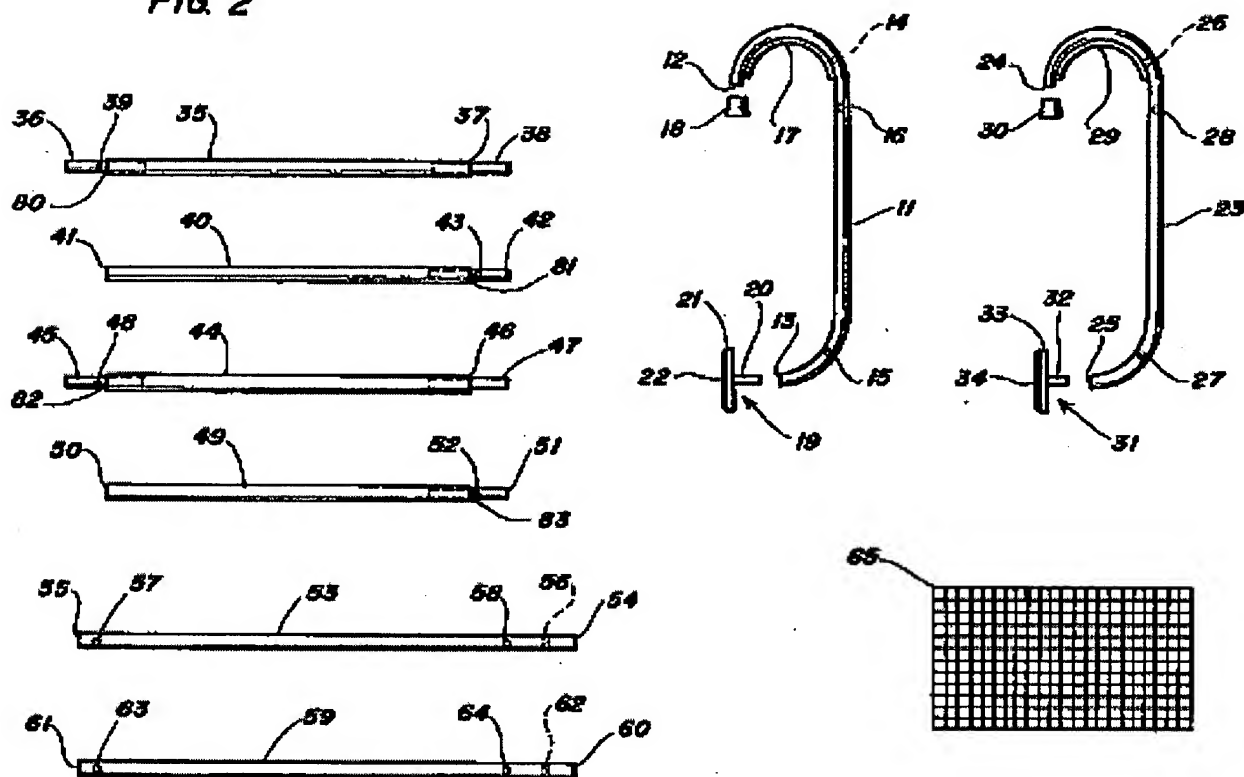
Mendes teaches a skimming device including a flap 40 connected to a collecting means by a securing means including a clip (at the bottom). It is considered that it would have been obvious to one ordinarily skilled in the art at the time of the invention to have the flap/clip of Mendes as the element 60 of the modified Anderson, since Mendes teaches the benefit of preventing material to be skimmed from entering areas that would bypass the collecting means (col. 6, lines 4-9). It also would have been obvious since the hinged configuration is more readily adjustable than the slot 62 of Anderson.

As for claims 18-20, the applied references do not mention the specific sizes of the elements or the limit of adjustment of the mounting means, but it is contended that such is within ordinary skill and would depend upon the structure of the swimming pool wall/rail wherewith the skimmer is to be used. See also *In Gardner v. TEC Systems, Inc.*, 725 F.2d 1338, 220 USPQ 777 (Fed. Cir. 1984), cert. denied, 469 U.S. 830, 225 USPQ 232 (1984).

14. Claims 14 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over the modified Anderson, as applied to claim 11, and in further view of Giacalone (U.S. 6,306,295). Giacalone teaches a skimmer wherein the collecting means includes a frame having hollow tubes and a net that is removable from the frame [as in claims 14 and 16]. It is considered that it would have been obvious to one ordinarily skilled in the art at the time of the invention to have the collecting means of the modified Anderson to be made of hollow tubes and the netting to be removable therefrom, as in Giacalone, since Giacalone teaches the benefit of be completely disassembled in to a compact form when not to be used for long periods of time. It is also

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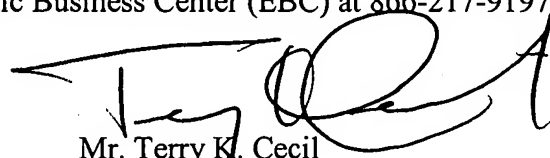
obvious for the netting to be removable from the frame in order to replace the netting when necessary.

**FIG 2**

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15. Contact Information:

- Examiner Mr. Terry K. Cecil can be reached at (571) 272-1138 at the Carlisle campus in Alexandria, Virginia for any inquiries concerning this communication or earlier communications from the examiner. Note that the examiner is on the increased flextime schedule but can normally be found in the office during the hours of 8:30a to 4:30p, on at least four days during the week M-F.
- Wanda Walker, the examiner's supervisor, can be reached at (571) 272-1151 if attempts to reach the examiner are unsuccessful.
- The Fax number for this art unit for official faxes is (571) 273-8300.
- Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Mr. Terry K. Cecil  
Primary Examiner  
Art Unit 1723

TKC  
August 30, 2005